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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GERARDO HERNANDEZ,) No.
Plaintiff,)
vs.) COMPLAINT ASSERTING DENIAL OF
BRINKER RESTAURANT CORPORATION) RIGHT OF ACCESS UNDER THE
dba CHILI'S GRILL & BAR; FREMONT) AMERICANS WITH DISABILITIES ACT
RETAIL PARTNERS, LP;) FOR INJUNCTIVE RELIEF,
Defendants.) DECLARATORY RELIEF, DAMAGES,
) ATTORNEYS' FEES AND COSTS (ADA

I. SUMMARY

1. This is a civil rights action by plaintiff GERARDO HERNANDEZ ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Chili's Grill & Bar
39131 Fremont Blvd.
Fremont, CA 94538
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against BRINKER RESTAURANT CORPORATION dba CHILI'S GRILL & BAR; and FREMONT RETAIL PARTNERS, LP (hereinafter collectively referred to as "Defendants"),

1 pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et
2 seq.) (“ADA”) and related California statutes.

3 II. JURISDICTION

4 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA
5 claims.

6 4. Supplemental jurisdiction for claims brought under parallel California law –
7 arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

8 5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

9 III. VENUE

10 6. All actions complained of herein take place within the jurisdiction of the United
11 States District Court, Northern District of California, and venue is invoked pursuant to 28
12 U.S.C. § 1391(b), (c).

13 IV. PARTIES

14 7. Defendants own, operate, and/or lease the Facility, and consist of a person (or
15 persons), firm, and/or corporation.

16 8. Plaintiff is substantially limited in his ability to walk, and must use a wheelchair
17 for mobility. Consequently, Plaintiff is “physically disabled,” as defined by all applicable
18 California and United States laws, and a member of the public whose rights are protected by
19 these laws.

20 V. FACTS

21 9. The Facility is a restaurant that is open to the public, intended for non-
22 residential use, and its operation affects commerce. The Facility is therefore a public
23 accommodation as defined by applicable state and federal laws.

24 10. Plaintiff lives less than 20 miles from the Facility and visited the Facility on or
25 about October 21, 2023 to dine at the restaurant. During his visit to the Facility, Plaintiff
26 personally encountered barriers (both physical and intangible) that interfered with, if not
27 outright denied, Plaintiff’s ability to use and enjoy the goods, services, privileges and
28 accommodations offered at the Facility. These barriers include, but are not necessarily limited

1 to, the following:

- 2 a) Both sets of doors at the entrance to the lobby were too heavy, which
3 made them difficult for Plaintiff to open.
- 4 b) There was no clear floor space in the waiting area for Plaintiff's
5 wheelchair other than the middle of the room, where he obstructed the
6 route of travel for other customers coming in and out of the door, which
7 was embarrassing.
- 8 c) The toilet compartment in the men's restroom lacked sufficient clear
9 space inside, and it also contained a baby changing table which further
10 reduced the clear space. When Plaintiff entered the stall, the changing
11 table was extended which prevented him from turning his wheelchair
12 around. The lack of clear space made it difficult for Plaintiff to transfer
13 to and from the toilet.

14 11. There may exist other barriers at the Facility which relate to Plaintiff's
15 disabilities, and he will seek to amend this Complaint once such additional barriers are
16 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to
17 his disabilities removed to afford him full and equal access.

18 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
19 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
20 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
21 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
22 once the barriers are removed.

23 13. Defendants knew, or should have known, that these elements and areas of the
24 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
25 the physically disabled. Moreover, Defendants have the financial resources to remove these
26 barriers from the Facility (without much difficulty or expense), and make the Facility
27 accessible to the physically disabled. To date, however, Defendants refuse to either remove
28 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facility without much difficulty or expense, that the cost of removing the architectural barriers does not exceed the benefits under the particular circumstances, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Defendants to remove the Facility’s barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

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VIII. THIRD CLAIM

Denial of Full and Equal Access to Public Facilities

43. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

44. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

45. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

46. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

47. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA for the purposes of Unruh Act damages.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

1 Dated: June 18, 2024

MOORE LAW FIRM, P.C.

2 /s/ Tanya E. Moore

3 Tanya E. Moore

4 Attorney for Plaintiff

5 Gerardo Hernandez

VERIFICATION

I, GERARDO HERNANDEZ, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: June 18, 2024

/s/ Gerardo Hernandez

Gerardo Hernandez

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore

Attorney for Plaintiff,

GERARDO HERNANDEZ